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No. 96-582

In The

Supreme Court of the United States

October Term, 1996

WESTBORO BAPTIST CHURCH, INC.,

Petitioner,

vs.

ST. DAVID'S EPISCOPAL CHURCH,

Respondent.

On Petition For Writ Of Certiorari To The Kansas Court Of Appeals

BRIEF & APPENDIX IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Preliminary Statement

There is a very limited record in this case. Counsel are aware of their obligation pursuant to rule 15, to point out in a brief in opposition any "perceived misstatement made in the petition" and any objections to "consideration of a question presented based on what occurred in the proceedings below".

The reason there is such a limited record available is that less than three business days before the combined hearing on the preliminary injunction and permanent injunction, Petitioners filed an appeal to the Court of Appeals of Kansas. Counsel in good faith believe that the allegations of the Petition, identified as "misstatements," are not uncontrovertible facts and by available evidence will be identified as "perceived misstatements."

The Petitioners do not identify, nor could they identify, any split of authority between the circuit courts or between the highest courts of the states on any of their issues.

Some Selected Misstatements

Misstatement No. 1. The first statement made in the petition "This petition pertains to a *preliminary injunction* by a trial judge . . . "

Evidence Available: From their own appendix it is obvious that this is not a "preliminary injunction," *it is a temporary restraining order.* (App. B1-5)

Misstatement No. 2. "Westboro Baptist Church, Inc. (WBC), is a small old school baptist church in Topeka, Kansas." (pg. 2).

Evidence Available: Westboro Baptist Church, Inc., has been led by one "Pastor" during its nearly forty years of existence. That is Fred Waldron Phelps. Mr. Phelps at the age of 17, after his freshman year at Bob Jones University, claims to have gone that summer to preach to the "Ute Indians" in Utah, and although a Methodist when he began this experience, he came back at the end of the summer an ordained Baptist minister.

At the time of these events the church had twenty-nine members. Today twenty-eight of them are related by blood or marriage to Fred W. Phelps.

Mr. Phelps is probably the most disciplined lawyer in the history of the state and his family of lawyers probably the most disciplined family. Mr. Phelps was suspended from the practice of law for two years, State of Kansas and Federal Courts, in 1969; followed by his disbarment from State of Kansas Courts and suspension in Federal Court for a period of two years in 1979; and ultimately his disbarment in Federal Courts in 1989. His disbarment in 1989 (as well as the discipline of two members of his family – Fred Jr. for six months and Margie J. Phelps for one year, respectively, in both State and Federal Court) was the result of a complaint filed in 1987 by every United State District Judge in the District of Kansas (sitting or senior status) against Mr. Phelps and every single member of the family firm, Phelps, Chartered. That complaint was more than a hundred pages in length and basically averred that Mr. Phelps and all the lawyers in the family firm (all members of the church) lied about and intimidated the Federal Judiciary. Within the family/church there are at least twelve law school graduates.

WBC has no affiliation with any other church or religious organization. It can be inferred from the evidence that this is a "family" or "clan" or some other entity than a "church."

Misstatement No. 3: Petitioners claim their picketing is in "connection with the ongoing debate in this country about homosexuality." (p. 2)

Evidence Available: The church has two primary forms of communication, pickets and facsimile communications which are broadcast throughout the community. A fair reading of those indicates basically an agenda of hate; the hate is not limited to homosexuals. The brand of "homosexual" or "fag" or "gay" or "sodomite" is more often than not a charge leveled at people who are heterosexual in their orientation. Themes of religious bigotry especially towards people of the Jewish faith, are evident. There are multiple examples of racial slurs and hatred. The generalized hatred of public officials (the Mayor, City Council, County Commissioners, the Sheriff, the Attorney General, the Shawnee County District Attorney, the Administrative Judge in the District and the Chief Justice of the Kansas Supreme Court) is evident. The claim of being "anti-homosexual picketers" can be shown in evidence to be pretextual. It is inferable that Mr. Phelps and family are pursuing an agenda of lies and intimidation against this and other churches as they previously had targeted the federal judiciary.

Misstatement No. 4: Westboro picketers specifically do not engage in acts of civil disobedience . . . (p. 6)

Evidence Available: There are some 20 separate events in Topeka involving physical altercations between

these picketers and members of the public. There have been three trials of picketers involving charges of battery resulting in one conviction of a church member for battery of a Lutheran minister on his own church property. In addition, the pastor and his grandson Ben have convictions arising out of picketing activity. Petitioner's counsel and the pastor have convictions for contempt in these proceedings in their attempt to disqualify Judge Barbara after he entered the T.R.O.

Misstatement No. 5: "The injunction was upheld on appeal by the Kansas Court of Appeals on a finding that an injunction could issue against lawful private picketing on a public sidewalk to protect the worship experience of persons who disagreed with the words, uttered and on signs, of the picketers." (p. i)

Evidence Available: Included in the appendix to the Brief in Opposition will be found the following examples of something more than disagreement from affidavits filed with the initial verified petition.

a. Nine year old Jason Buening on his way into Easter Services is yelled at by Jonathan Phelps (Petitioner's counsel's 300 pound-lawyer-brother), "Butt-fucker" and "Your mother is going to hell and take you with her, you son-of-a-fag." (V. Buening Aff.)

b. A church member was taunted by Reverend Phelps "That's the man whose daughter tried to kill herself" and other members of the family chiding "Did you remember to lock your medicine cabinet when you left so your dyke daughter won't kill herself." (B. Cecil-Fronsman Aff.)

c. One of the pickets calling a woman, who was a victim of cancer, "An old whore" and upsetting her to the point that she had to be consoled by other members for 10 to 15 minutes before she would go into the worship experience on Pentecost. (N. Flickinger Aff.)

d. The picketing of the wedding where members of the wedding party were called "Bull-dykes" and their presence requiring the wedding party to go out the back door of the church (Hud Hamilton Aff.)

e. The observation by the Priest that over time the pickets have become more vicious and verbally violent and have steadily moved closer to the parish and its people, with the appearance of trying to provoke a violent confrontation. (Two of the above-referenced altercations were adjacent to the church property near the time of church services with members of the public not associated with St. David's). The Priest also describes the intense emotional upheaval that is the result of being verbally battered with vulgar accusations and lies over an extended period of time and the depletion of the energy. Examples of statements that have been made to the Priest are "Rectum Bob and his KY-Jelly boys are having sex in the sacristy". He also describes the interruptions of major feasts of the church; Christmas midnight mass and Easter sunrise services. He describes the shouts and accusations that are made at members of the congregation as they pass by the pickets being called "Faggot," "sodomite" and "whore" and describing Eucharist participants as the people who "Drink rectal blood at the alter of their sphincter," these statements are in addition made in the presence of children. (Fr. R. Layne Aff.)

f. The affidavit Dr. Robert Proctor, a licensed psychologist, describes the pain and fright of the members and guests of St. David's as they were confronted by the pickets and the hurt and anger of parents trying to enter the church with their children through the picket line. He also identifies some of the events of which the members are aware which do involve physical violence at other picketing locations. (Dr. R. Procter Aff.)

g. The affidavit of the Bishop of Kansas, indicates that one of the picketers (and incidently counsel in this case) addressed him by saying " You have the authority, you look like someone who has authority, you ought to close this fag church!" (Rt. Rev. W. Smalley Aff.)

The Affidavits demonstrate that this T.R.O. and injunction was not sought simply because of ideological disagreement.

More specific disagreements could be identified, but the above specifics make the point that the activity in which the Petitioners have been engaged is not accurately reflected in their petition.

Subsequent Legislation

Since the granting of the temporary restraining order the City of Topeka has enacted two ordinances respecting picketing activity, which are in the appendix. There is substantial similarity and operative effect between the ordinances and this particular injunction.

Topeka Ordinance 54-135 was enacted July 28, 1995 and creates a buffer zone of 50 feet from the perimeter of church property on the sides where there is an entrance.

That ordinance when applied to this particular set of facts would enlarge the zone of the injunction on three sides of the church, but not on the fourth. However in practical application it only means that the picketers could be South of the church on a sidewalk across the street from the main entrance.

The Topeka Ordinance adopted September 20, 1995 creating a 90 foot perimeter would create an even greater buffer zone for the picketers than this injunction. Even though the distance on the South side of the church would be shorter (90 feet versus 215 feet), the fact that the 90 foot extends into private property where the picketers are not allowed to go would have the same effect as that provided by this injunction. In fairness it should be mentioned that WBC has challenged those ordinances, the hearings in fact were conducted for seventeen days, the matter has been fully briefed and is under advisement by a State District Judge.

Opposition to the reasons the writ should issue

A. THE CLAIM IS THAT IT WAS ERROR FOR THE STATE COURT TO FIND THAT A CHURCH BUILDING IS ENTITLED TO THE SAME LEVEL OF PRIVACY AS A RESIDENCE.

The Court of Appeals said:

> We agree with the trial court and find that in addition to the government interest in protected residential and clinical privacy, the government has a legitimate interest in protecting the privacy of one's place of worship as well. This interest does not flow directly from the

> right of free exercise of religion found in the First Amendment of the United States Constitution and § Seven in the Bill of Rights of the Kansas Constitution. Those constitutional provisions safeguard the free exercise of religion from governmental interference. However the right of free exercise would be a hollow one if the government could not step in to safeguard that right from unreasonable interference from another private party. (App. A-20, 21)

The court also stated:

> More broadly stated to apply here, one's religious worship may not be unduly disturbed by another anxious to preach a different religious or social philosophy. (App. A-21)

Petitioners argue that the *building* is being protected, not the *worship services*. It is clear though from the injunction that the time element was 30 minutes before, during and 30 minutes after a posted religious service. (Appendix p. B-4) The observation that was made by both the District Court and the Court of Appeals was that the worshipers were the ones being disturbed. It is not the protection of the premises it is the protection of the use of the premises for worship by people that is articulated.

B. WAIVER OF PRIVACY INTEREST BY THE CHURCH.

Whatever this issue may be it is not one for Constitutional level inquiry. This is an issue that could be raised at a hearing on a preliminary/permanent injunction; which is the proceeding that the Petitioners have avoided

by its continuing appeal of the temporary restraining order.

C. THE CLAIM THAT PICKETING CANNOT BE ENJOINED UNLESS IT IS "UNLAWFUL."

Many of the picketing cases have involved "lawful" picketing including *Lawson v. Murray*, ___ U.S. ___, 115 S.Ct. 2264, 132 L.Ed.2d 269 (1995) cited by Petitioner. No requirement of *Madsen v. Women's Health Center*, 512 U.S. ___, 114 S.Ct. 2516, 129 L.Ed. 2d 593 (1994) requires a finding of unlawful activity.

D. THE CLAIM THAT MORE THAN "FOCUSED PICKETING" WAS ENJOINED.

The order makes clear that it is enjoining "focused picketing." (App. B-3) This is an issue again that could be raised in a hearing and the Court of Appeals directed the issue to be handled by the District Court. This court does not have a record before it, nor is it of constitutional significance to try to delineate whether this T.R.O. affects "focused picketing" or something more than "focused picketing". The absence of a record is critical. The Kansas Court of Appeals and the Supreme Court in Kansas should have a look at this issue before it becomes a matter for concern by this Court. Certainly the restrictions set forth in *Lawson v. Murray* (supra) of a 100 foot perimeter at all times and then a very limited period of time each week with a specified number of picketers beyond that distance indicates that this is not a matter of concern for this Court at this time.

E. THE CLAIM THAT THE INJUNCTION IS NOT CONTENT NEUTRAL AND BURDENS MORE SPEECH THAN NECESSARY.

Once again this is an issue that is not ripe for presentation to this court in the absence of a hearing. The argument contains a self-defeating reference to the Court of Appeals opinion indicating the need for further hearing.

F. THE CLAIM THAT THE STATE SHOULD NOT PROTECT THE WORSHIP EXPERIENCE.

The observation made by the Court of Appeals is that there would be a "hollow right" if third persons could interfere with the religious experience of other people. The observation is really that speech is not the *only* value in our society. The body of case law that recognizes that reasonable time, place and manner restriction can be imposed in a facially neutral manner to limit speech underpins the finding of the Kansas Court of Appeals. The *Madsen* limitation for injunction nevertheless permits restrictions, but, requires more scrutiny than if the restriction was imposed legislatively. Certainly, a government has an interest in protecting privacy and this extension to religious privacy is a logical and reasonable extension. It is a declaration by the Kansas' courts of a Kansas State interest that is substantial; certainly a finding within the jurisdiction of the Kansas' courts.

G. THE CLAIM THAT THE STATE COURT COULD NOT TREAT WESTBORO'S PICKETING AS A NUISANCE.

This is essentially a cumulative claim with no special distinction from the points that proceed it.

H. THE CLAIM THAT WBC SPEECH WAS ENTITLED TO LESS PROTECTION BECAUSE CHILDREN WERE PRESENT.

Children were not allegedly present; according to the affidavits they were present! The court recites its analysis of US Supreme Court cases including *FCC v. Pacifica Foundation*, 438 US 726, 98 S.Ct. 3026, 57 L.Ed.2d 1073, rehearing denied 439 US 883 (1978) their conclusion "In general, these cases show that depending on the content the government does have an interest in protecting children from objectionable speech beyond the interest it has in protecting adults from the same speech." The description of the experience of Jason Buening, the nine year old who was called a "butt-fucker" by a 300 pound man in close proximity, is certainly more threatening than anything that occurred to the child auto passenger exposed to George Carlin's 12 minute monologue on "filthy words". The Petitioners fail to appreciate the hostility and fear that they generate through their conduct, but, even though they may be ignorant of the impact the courts do not need to share in that ignorance.

Conclusion

This is a case that is not ripe for consideration by this court on a Petition for Certiorari. This is a case that needs an evidentiary hearing. With the enactment of the ordinances in the City of Topeka which restrict picketing near houses of worship there is little if anything that these picketers would be permitted to do today even if this temporary restraining order was lifted.

Respectfully submitted,

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Sec. 54-135. Picketing of religious events.

(a) *Definitions.* The following words and phrases, when used in this section, shall have the meanings respectively ascribed to them:

Announced religious event means a religious event regarding which the public has been provided notice of the beginning time and of the duration or ending time of such event by the conspicuous posting of a sign on the property where the event is to be held.

Focused picketing means standing or sitting or walking in a repeated manner past or around a house of worship, by one or more persons while carrying a banner, placard, or sign.

House of worship means any church, synagogue, mosque, or other structure that is regularly used for the exercise of religious beliefs.

Religious event means any scheduled worship service, wedding, funeral rite, memorial service for the dead, or other observance of a religious sacrament, ritual, ceremony or celebration that takes place at a house of worship or on the property where a house of worship is situated.

(b) *Unlawful acts.* It is unlawful for any person to engage in focused picketing, during the time period from one-half hour prior to the beginning time of an announced religious event until one-half hour after the ending time of the event, on public property at any of the following locations:

(1) On the sidewalk adjoining the property on which a house of worship is situated; or

(2) In the street or roadway adjoining or adjacent to the property on which a house of worship is situated; or

(3) On the public area between the house of worship and an adjoining or adjacent street or roadway, including but not limited to the curb, drainage, or area between the street and sidewalk (if a sidewalk exists) commonly referred to as the "parking" or "easement"; or

(4) On any public property within 50 feet of the property line on which a house of worship is situated, if any entrance to the house of worship is located on that side of the property.

(c) *Penalty*. Any person violating this section may be punished by:

(1) A fine of not more than $499.00;

(2) Imprisonment in jail for not more than 179 days; or

(3) Both such fine and imprisonment not to exceed the limits set out in subsections (c)(1) and (c)(2).

(Ord. No. 16843, §§ 1-3, 7-11-95)

(Published in the Topeka Metro News: September 20, 1995)

ORDINANCE 16859

AN ORDINANCE introduced by InterFaith of Topeka pursuant to K.S.A. 12-3013 regarding picketing of religious events.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. **Name:** This Ordinance shall be known as the "Picketing of Religious Events" Ordinance.

Section 2: **Definition:** All words and phrases, when used in this article, shall have the meanings, respectively described to them:

A. *"Focused picketing."* Means picketing by standing, sitting or walking at a deliberately slow speed or walking repeatedly past or around a place where a religious event is to take place or is taking place or has taken place by any person while carrying a banner, placard or sign. Focused picketing does not include any activity carried on under a validly issued parade permit.

B. *"Demonstrating."* Includes all of the activities indicated in A. above for "focused picketing," but is done by persons who are not carrying any of the devices enumerated but who verbally address any person who is not participating in the demonstration who appears to be coming or going from a protected event when the person is addressed in a hostile or rude or loud manner.

C. A *"protected event"* means a religious event. Religious events include scheduled worship services,

weddings, funerals, memorial services for the dead, and the observation of other sacraments, rituals or celebrations which may take place in the house of worship.

D. *"Posted."* Religious events become protected when the time of those events have either been announced in a newspaper regularly printed on at least a weekly basis within the city or which have been announced by a sign within 200 feet of the primary entrance to the structure where the event is to be held.

Section 3. **Unlawful Acts:** It is unlawful for any person to engage in focused picketing or demonstrating on, or within an area 90 feet adjacent to, the property of grounds containing a structure where a religious event is being held. This action is only in violation of this Ordinance if the picketing or demonstrating is done within the one hour before, during, or one half hour after a protected religious event which has been posted. The distance shall be measured from all points along the property line of the property where the structure that houses the event is located.

Section 4. **Severability:** If any part or parts of this Ordinance shall be held unconstitutional, invalid, or otherwise unenforceable by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

Section 5. **Effective Date:** This Ordinance shall take effect and be enforced from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the City Council: September 12, 1995

(Seal of Topeka)

/s/ Harry Felker
Harry Felker, Mayor

ATTEST:

/s/ Iris E. Walker
Iris E. Walker, City Clerk

AFFIDAVIT OF VICKI BUENING

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

1. My name is Vicki Buening, I am married to Larry Buening, we have two children, Jason 9, and Lindsey 12. We are all members of St. David's Episcopal Church, Topeka, Kansas.

2. We made a decision when St. David's started its witnessing program that we would participate as a family and proclaim God's love, and felt that we should take a stand and not just accept what was happening on our doorstep with the WBC picketers. We wanted our children to participate but we would not endanger them. We were the first group leaders and would participate at least once each six weeks as witnesses.

3. On Easter morning, my family had witnessed and the WBC group was quite hostile and verbal, and they were walking very close to us preaching and shouting at us, and they were close enough that it was physically intimidating. During the sunrise service, Father Bob led a procession out of the west door on the south side of the church and processed to the east door on the same side of the church. When he emerged with the congregation picketers started yelling at him, calling him "Rectum Bob," and other insults and making a great deal of noise during one of the most significant religious services of our church year.

4. We went home and came back later for the 10:30 a.m. Easter Service, and I was with my son Jason. I heard

Jonathan Phelps yell at Jason, "buttfucker," and "your mother is going to hell and take you with her, you son of a fag." After those experiences we decided that it was unsafe to have our children on the line and that they were in danger. From the circumstances I was convinced the WBC people were trying to pick a fight and I didn't want my children to be involved.

5-6. I personally have stopped witnessing because I can't any longer take the humiliation and degradation that comes along with standing outside my church with a sign that proclaims God's love.

7. I do continue to go to church, but every time I see the Phelpses, I develop a feeling of hostility and it takes several minutes for me to be inside the church and inside the service before I get centered enough to appreciate the worship service that I came for. I feel verbally assaulted each time I pass them, and so to avoid them, I go in the back door of the church at the rear of the building on the west side, rather than entering through the front door as I ordinarily would. The WBC members are interfering with my right to worship and it affects me adversely and the members of my family adversely.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Vicki Buening
Vicki Buening

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

Vicki Buening, of lawful age, being first duly sworn, states that the above Affidavit is true and correct to the best of her knowledge, information and belief.

/s/ Vicki Buening
Vicki Buening

Subscribed and sworn to before me this 7th day of June, 1994.

/s/ Jerry R. Palmer
Notary Public

(Notary Seal)

My Appointment expires: 10/12/95

AFFIDAVIT OF BILL CECIL-FRONSMAN

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

1. My name is Bill Cecil-Fronsman, I am a professor at Washburn University and am a resident of Topeka, Shawnee County, Kansas, and have been since August of 1989, a member of St. David's Episcopal Church, Topeka, Kansas.

2. I have been part of the witnessing program at St. David's and stand in front of the church with a sign proclaiming God's love for all people.

3. Sometime during the autumn of 1993, Mr. Fred Phelps (pastor of the Westboro Baptist Church), shouted out to me, "That's the man whose daughter tried to kill herself." He pointed me out and a number of his family members began to laugh. That was the beginning of what I consider to be a persistent pattern of personal harassment.

4. In December of 1991, my then 12-year old daughter deliberately took an overdose of her insulin (she is an insulin-dependent diabetic). She was hospitalized and has continued to struggle with depression. The Phelps family has made her an object of ridicule. On numerous occasions since last fall members of the Phelps family have made explicit references to her suicide gesture. For example, in March of 1994, while I was leaving my car to enter St. David's, a member of the Phelps family called out "Did you remember to lock your medicine cabinet when you left so your dyke daughter won't kill herself?"

5. This incident has come up in a number of other taunts. A persistent taunt of the Phelps family has been to ask if I have learned to stitch up wrists. This question has been asked of me repeatedly in obvious reference to her suicide gesture.

6. While leaving church on Sunday, May 22, 1994, one of the younger male members of the family shouted out an accusation that I was a sodomite and that this was why "Thea tried to kill herself."

7. It is difficult for me to describe the pain that this has caused me. Anyone who has coped with the depression of a family member knows that it is a difficult and demanding process for all involved. I have sought support and solace from the members of St. David's and have found this to be a community that has stood by my family and me during our struggles. I feel as though the Phelps family has attempted to strip away this source of comfort. Every time I go to church I must be prepared to be reminded of one of the most painful experiences in my life. Instead of coming to church in a joyful mood, looking forward to the comfort God's message brings, I must instead face a gauntlet of hostile taunts from people who seek to stir up the pain of this experience.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Bill Cecil-Fronsman
Bill Cecil-Fronsman

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

Bill Cecil-Fronsman, of lawful age, being first duly sworn, states that the above Affidavit is true and correct to the best of his knowledge, information and belief.

/s/ Bill Cecil-Fronsman
Bill Cecil-Fronsman

Subscribed and sworn to before me this 12th day of June, 1994.

/s/ Susan J. Daffron
Notary Public

(Seal)

My Appointment expires: 10/22/94

AFFIDAVIT OF NANCY FLICKINGER

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

1. My name is Nancy Flickinger. I am a resident of Topeka, Shawnee County, Kansas, and am a member of St. David's Episcopal Church.

2. On April 22, 1994, (Pentecost Sunday), about 10:15 a.m. I was standing on the porch on the south side of St. David's. Frank Rice and his wife were walking down the public sidewalk and the WBC pickets were strung along that sidewalk. Thirty feet behind Frank and his wife were another couple whom I did not at that time know. One of the younger WBC members called the lady a "an old whore." The woman's husband turned around and put his hands on a young man next to the one who had uttered the statement and started arguing with him. I urged him to get back because of what I feared would be physical violence that would follow. About that time the young red-haired Duncan boy tried to get involved and the Henault boy and my daughter Heidi Crossland went out to pull the Duncan boy away from the scene. Heidi then brought the lady into the parish and she was visibly shaken and quite upset by the altercation. She explained she was a cancer victim and she was going in for tests on Monday and that she was one of the people for whom we had been praying. Several of us spent 10 to 15 minutes with her trying to encourage her and demonstrate the love within the parish to try to help her overcome the experience outside the doors of our church. Pentecost is one of the highest holy days in the Episcopal year.

3. On the evening of June 4, 1994, between 4:30 and 5:00, I was on the witness line and one of the younger members of the WBC was calling me a "dyke" and a "whore." Jonathan Phelps came up and said no, he shouldn't be calling me those names, he should be calling me "Bitch Flickinger," and that "she eats vomit." I was shaking inside and I kept repeating the Lord's Prayer.

4. Sometime back (the night the motorist was attacked at 17th and Gage), the WBC pickets were much more aggressive than usual and appeared to be looking for a fight. Charles Hockenbarger got within six inches of my face and called me a "motherfucking son of a bitch." It was later that afternoon that the motorist got out of his car and started arguing with the WBC picketers, and they took him down on his stomach and spread his legs. The attack appeared to be choreographed with each person doing a specific job.

5. The pickets are becoming increasingly more intimidating and their aggressiveness toward people coming into the church like the experience of the Ohse's on April 22, makes me fear that our members or guests will be injured from simply getting into an argument after having these cruel accusations made to them.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Nancy Flickinger
Nancy Flickinger

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

Nancy Flickinger, of lawful age, being first duly sworn, states that the above Affidavit is true and correct to the best of her knowledge, information and belief.

/s/ Nancy Flickinger
Nancy Flickinger

Subscribed and sworn to before me this 9th day of June, 1994.

(Seal) /s/ Diane S. Kathrens
Notary Public

My Appointment expires: 1/31/95

AFFIDAVIT OF HUD HAMILTON

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

1. My name is Hud Hamilton, I am a resident of Topeka, Shawnee County, Kansas, and am a member of St. David's Episcopal Church.

2. Saturday, June 4, 1994, was one of the biggest days of my life as my only daughter was married at St. David's Episcopal Church.

3. Immediately after the service as we walked out the east door on the south side of the church, we were confronted by the WBC picketers.

4. The wife of one of the wedding party who was from out of town and unaware of the pickets, was called a "bull dyke."

5. One of the picketers, a man named George who works at Falley's, started yelling at me.

6. The worst part of the experience was that my friends and relatives couldn't understand why the wedding was being picketed and it was extremely embarrassing to me and my family.

7. The bride and groom were upset, but tried to calm everyone down and not let it spoil the day. The groom's stepfather and I were both so furious that we nearly physically confronted the picketers.

8. After the photographs were taken we steered the wedding party out the back door, rather than coming out

of the front door of the church as would be normal. My daughter is a third generation member of St. David's, has been a missionary, and is about to enter the priesthood of our church, and I will always grieve the blemish that was placed on her wedding by these cruel people.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Hud Hamilton
Hud Hamilton

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

Hud Hamilton, of lawful age, being first duly sworn, states that the above Affidavit is true and correct to the best of his knowledge, information and belief.

/s/ Hud Hamilton
Hud Hamilton

Subscribed and sworn to before me this 6th day of June, 1994.

/s/ Diana L. Karasek
Notary Public

My Appointment expires: 12/16/97

(Seal)

AFFIDAVIT OF FR. ROBERT P. LAYNE

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

1. My name is Robert P. Layne, I am the Rector of St. David's Episcopal Church and a duly ordained priest of the Episcopal Church.

2. For over two years "hate pickets," members of the Westboro Baptist Church, have picketed one or more services, sometimes all of them, at this church. The members and guests and others who seek to worship at St. David's have been regularly assaulted with visual and verbal violence on their way to the parish religious services.

3. Originally these attacks were limited to Sundays. Later their harassment was expanded to include the regular 5:30 Saturday evening Holy Eucharist and now extends to weekday services, including the Order of St. Luke.

4. The largest numbers of picketers seem to be drawn to us on the holiest of days in our church (Easter, Pentecost, Christmas and Palm Sunday).

5. Over time the number of verbal assaults and threatening behavior has become noticeably escalated.

6. Many of our members complain about this hate on our doorstep and how it is upsetting their personal religious experiences worshiping at St. David's.

7. After a year of not directly taking any action the people of St. David's decided to make a peaceful but

assertive response, and in that way set up the witnessing program by personally, peacefully and consistently confronting the "hate picketers" by public witnessing to the truth of God's love. This occurs every Saturday evening and Sunday morning.

8. Through all extremes of weather, parishioners continue to station themselves on the perimeters of the church, proclaiming with their own signs that the God worshiped at St. David's is a God who loves all he creates and that St. David's is a house of prayer for all people. Over 130 members of the parish have participated at one time or another, and almost a like number of persons from the community have joined on one or more occasions to assist in this endeavor.

9. Strict rules of non-confrontation and non-violence are observed, and each witness must sign the pledge each time they witness, and the rules of witnessing are posted on the back of all of their signs as reminders, in order to hold down the possibility of violence which is ever present.

10. The response of the WBC pickets has been for more vicious and verbal violence. They have steadily moved closer to the parish and its people, and in my opinion from viewing the escalation of activity, are trying to provoke a violent confrontation.

11. We have on numerous occasions asked the police to be present, and sometimes patrol cars are dispatched and sometimes they are not. The police have some tempering influence on the picketers, but not entirely. I have actual fear that there will be physical confrontations between members of my congregation and

the picketers as they approach in proximity, and become more verbally combative. There is a noticeable difference in these parameters from a year ago.

12. Words can hardly express the intense emotional upheaval that is the result of being verbally battered with vulgar accusations and lies over an extended period of time. To inhibit this normal human impulse to strike back against vulgar, personal insults, demands tremendous energy. It emotionally drains those who so endure, so absorb it, and so control their reaction. Additional energy is also demanded and depleted when one must immediately shift emotions, go into church, lead worship and proclaim the truth of God's love and celebrate and share his living presence in the Holy Eucharist. Such an effort for me is very difficult.

13. When I stand beside members of my parish and suffer the abuse and taunts (Rectum Bob and his K-Y Jelly boys having sex in the sacristy), and the like, I must clear my heart of pain and anger sufficient to worship God in peace and lead my congregation. Our clergy and our lay people have suffered grievously from this persistent onslaught of hate. We have endured this aggression and maintained self control for over two years.

14. The persecution takes an even greater toll on those who come to church already weakened by physical illness or emotional concerns or the oft-endured internal struggles with the difficulties of ordinary life. For those already dealing with internal crisis, the forced walk through the "hate pickets" greatly intensifies their pain and multiplies their wounds, bringing some to tears and others to the point that they cannot worship.

15. On Pentecost Sunday (May 22, 1994), when a member of St. David's who is suffering from life-threatening cancer was verbally accosted and insulted by the hate picketers as she approached the church seeking comfort and solace, this innocent woman was emotionally shattered and subsequently had to leave in tears. Some of her fellow members hearing the cruelty and seeing the results rushed to this lady's defense. This nearly resulted in a serious physical conflict. Cooler heads prevailed, however, and in the face of continued verbal assaults from the picketers, other parishioners successfully brought the angered ones into church. How many others seeking the healing administration from the church have been denied that ministry because of their weakened condition and the tremendous amount of effort and energy needed to merely walk through the hate on the sidewalks adjacent to St. David's cannot be calculated, but as a priest I can infer that there are those who are not using the services of the church for this reason. I am told of these things by my parishioners.

16. Other examples of particularly painful experiences have occurred on the major feasts of the church when the congregation swells with many visitors. On Christmas Eve the beautiful silence and solemnity of the Midnight Mass celebrating the birth of the Prince of Peace was shattered by the shouts of condemnation and hate that greeted innocent late-night worshipers. Again, on Easter morning when many gathered at sunrise outside the church to begin the annual remembrance of the Resurrection of the Prince of Peace, the morning was broken with loud insults and threats leveled against those gathered to joyfully celebrate.

17. On the previous Palm Sunday when six local churches for the 24th year gathered at its sister parish to join in a "blessing of the palms," all of the St. David's marchers were forced to walk through a phalanx of hatred and shouts of insults, while members of the WBC flanked the parade, hurling vicious accusations against the worshipers and their priests.

18. During Pentecost the children of St. David's would ordinarily have gone to the Memorial Garden in St. David's and distributed red ladybugs, but this would have placed them in such close proximity to the hate pickets that instead they were diverted to the Tomato Patch west of the parish, so that the children would not have to face the hate.

19. Words are weapons, they weaken, wound and can even destroy. Increasingly we are reminded of the damage done by verbal abuse. Many Topeka health care professionals spend their entire practices trying to heal the wounds inflicted by the verbal abuse of parents, siblings or even cultures. All of us are being encouraged to correct old insensitivities and to guard against the current words that demean or denigrate other persons. Native Americans are offended by sports teams that indiscriminately describe themselves with names or mascots reflecting Native American life or culture. Equally the word "boy" spoken to an African American male has been judged damaging and derogatory. The vulgar words hurled against the good people of St. David's weaken and wound with a viciousness that I believe equals or exceeds the examples mentioned. This bombardment of hate wounds the worshipers of St. David's.

20. The picketers who surround St. David's every week have shouted as accusations at members of our congregation, "faggot," "sodomite," "whore" (any woman with short hair,) "Rectum Bob Layne who has rectal sex with his K-Y Jelly boys in his rectumry," and "they" (the people of St. David's) are those who "drink rectal blood at the altar of their sphincter!" These shouts are directed at random against persons entering the church. It is especially painful for parents who must explain to the children the meanings of the vulgar signs and words directed toward them, not only by the adult picketers, but even by the children of the WBC members.

21. I am aware of at least one family who has left the parish because they can no longer tolerate the hate at its doorstep. This is a woman who was baptized, married, whose children were baptized in the parish, and whose parents were for years leaders in this parish. It is now a family which can no longer worship together in peace in their home parish.

22. In part, the witnessing program was to help establish that the message of St. David's parish is the proclamation of the love of God toward all persons and we have feared and our fears have been confirmed that others who pass by the corner of 17th and Gage have attributed that the message of the WBC pickets as espoused on their signs and from their mouths to the passersby as being owned by St. David's Episcopal Church, and that these are the actions of our members. This leads to irreparable damage to our name. Confirmation of these fears have been brought to me by members of the parish who have talked to the people who made

this mistake and were subsequently corrected by members of the parish, but due to the traffic volume on Gage and the low number of interactions that would be expected with St. David's members, it is fair to infer that many believe that these awful statements ("God hates every day," "God hates fags," "Hate is a bible value"), are the messages of our church and does inestimable damage to our reputation.

23. It has been reported to me that at the 5:30 p.m. service that the singing and shouting adjacent to the chapel where we hold that service is disturbed by the sounds emitted from the WBC members.

24. On June 4, 1994, a young couple was married in our sanctuary and some 350 people attended the wedding, and as the celebrants left to go to the reception the WBC pickets were lined up directly in front of the main entrances to the church and shouted at and taunted the wedding guests, greatly upsetting the families in the wedding.

25. Ray Bloxom who was not a member of our parish but whose funeral service was held in our church, had his family assaulted with signs declaring "Ray is in hell" on the approaches to the church, prior to the service.

26. In no way can the WBC demonstrators be described as "peaceful pickets." Their messages of filth portrayed on their signs many times have no relevance whatsoever to any potential issue with our parish, "bare butt Jan," "Fag God = rectum," "Fag ___ (multiple persons who have no association at all with the church)." One of the signs declares "Fags wed here." (Episcopal church doctrine prohibits weddings between persons of

the same sex and to perform such weddings would be a violation of church law and is not done in this parish.)

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Fr. Robert P. Layne
Fr. Robert P. Layne

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

Fr. Robert P. Layne, of lawful age, being first duly sworn, states that the above Affidavit is true and correct to the best of his knowledge, information and belief.

/s/ Fr. Robert P. Layne
Fr. Robert P. Layne

Subscribed and sworn to before me this 7th day of June, 1994.

/s/ Jerry R. Palmer
Notary Public

My Appointment expires: 10/12/95 (Seal)

AFFIDAVIT OF DR. ROBERT PROCTER

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

1. My name is Dr. Robert Procter, I am a Ph.D. licensed psychologist, and I live and work in Topeka, Shawnee County, Kansas. I have been a member of St. David's Episcopal Church for over twenty years. I have been one of the leaders of St. David's witnessing program.

2. Being involved with the witnessing program has put me in contact with the WBC members on nearly a weekly, and sometimes twice weekly, basis for over the past year. I have heard verbal accusations made by the WBC pickets toward the members and guests of St. David's where persons on their way to worship have been called "fags," "whores," "dykes," "faggy boy," "slant-eyes," "little Nazi," "buttfuckers," and the like.

3. To these same persons, the WBC pickets have said that the wine served at the altar is "rectal blood," that the worshipers are "worshiping at the rectum," that they are "worshiping at the altar of the sphincter," that the members are participating in "gerbiling," with description of pulling of the nails from the gerbils and inserting them in rectums. These are all statements that are grossly offensive to an Episcopalian for when the cup is passed and served to the members the pronouncement is made by the priest or deacon, "the blood of Christ, the cup of salvation," and the characterization of the sacramental wine as rectal blood is a sacrilege.

4. The WBC pickets are by their presence physically intimidating. When the witnesses are not present, they will line the front sidewalk of St. David's from the driveway east to the sidewalks which enter the south side of the building. They will chant or sing or shout or sometimes preach condemning the Episcopal Church. When the witnesses are present they are standing with their signs or may walk behind the St. David's witnesses whose signs are there. On one occasion I remember one of them saying, "how would you like to be in a headlock?" They are particularly abusive toward our Rector, calling him "Rectum Bob" and other insulting names.

5. The five most verbal members of the group who are among the most vile and aggressive are Fred Phelps, Sr., Marjorie Phelps, Jonathan Phelps, James Hochenbarger and George Stutzman.

6. My interpretation of their language is that it is provocative and seeks an angry response and in my opinion they are looking for a fight. In our witnessing program we put on as many controls as we can to avoid such an incident arising. The St. David's witnesses on each occasion must sign a pledge of non-violence; the principles of non-violence and avoidance of interaction with the WBC pickets is reduced to a number of rules and taped to the back of the signs that are carried by the St. David's witnesses.

7. I have seen the pained and frightened expressions of the members and guests of St. David's as they are confronted by the WBC pickets. I have seen the distress our witnesses go through after enduring obscene taunts by the WBC pickets. I have seen the hurt and anger of

parents trying to shepherd their children to church through these obscenities.

8. The members of St. David's are well aware of the potential for violence with the WBC members. Included in our knowledge is an incident which occurred March 12, 1994, at the corner of 17th and Gage when a motorist got into an altercation with the WBC pickets on the northeast corner of the intersection and they set upon him. All of our members are aware of the attack on the Rev. Weeks, and many of our members are aware of the attack on the jogger in Gage Park, the video crew at 6th and Kansas, the Stringer boy at a church bazaar, and the Vintage incident. The people of St. David's are threatened physically by the presence of the WBC pickets, and this increases when they are in proximity to our members or when they are being more verbally abusive, and this is disturbing to the worshipers of St. David's, and is reputedly by many accounts of persons with whom I have talked, a diminishing of the religious experience at St. David's.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Robert L. Procter
Dr. Robert Procter

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

Dr. Robert Procter, of lawful age, being first duly sworn, states that the above Affidavit is true and correct to the best of his knowledge, information and belief.

/s/ Dr. Robert Procter
Dr. Robert Procter

Subscribed and sworn to before me this 7th day of June, 1994.

/s/ Jerry R. Palmer
Notary Public

My Appointment expires: 10/12/95 (Seal)

AFFIDAVIT OF THE RIGHT
REV. WILLIAM E. SMALLEY

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

1. I am the Right Rev. William E. Smalley, Bishop of the Episcopal Diocese of Kansas and a resident of Topeka, Shawnee County, Kansas.

2. That on Saturday, June 4, 1994, I was officiating at the wedding of Gar Demo and Kelly Hamilton at St. David's Episcopal Church, Topeka, Kansas.

3. As I was leaving the church, the Westboro Baptist Church pickets were arrayed on the public sidewalk on the south side of the church.

4. A woman I know to be Marge Phelps addressed me by saying, "You have authority, you look like someone who has authority, you ought to close this fag church!"

FURTHER AFFIANT SAYETH NAUGHT.

/s/ The Right Rev. William E. Smalley
The Right Rev. William E. Smalley

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

The Right Rev. William E. Smalley, of lawful age, being first duly sworn, states that the above Affidavit is true and correct to the best of his knowledge, information and belief.

/s/ The Right Rev. William E. Smalley
The Right Rev. William E. Smalley

Subscribed and sworn to before me this 9th day of June, 1994.

/s/ Susan J. Daffron
Notary Public

(Seal)
My Appointment expires: 10/22/94